

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SONYA HAYTHE, DOUGLAS SMITH, and  
PETER COFFIN, individually and on behalf  
of all others similarly situated,

Plaintiffs,

v.

SAMSUNG ELECTRONICS AMERICA,  
INC.,

Defendant.

Civil Action No. 1:22-cv-03509-VEC

**DECLARATION OF KHALED ABUALI**

I, Khaled Abuali, declare as follows:

1. I make this declaration based on personal knowledge and my review of business records related to Samsung's Smart TVs and "Smart Hub" software. If called to testify, I could and would testify to the following facts.

2. I am employed as a Staff Engineer II, Product Support at Samsung Electronics America, Inc. My job responsibilities include evaluating television quality issues experienced by consumers and designing remedies for such issues; pre- and post-production testing of televisions; providing technical support to design and factory engineers; and providing support to field service technicians and Samsung technical support agents handling television issues.

3. As part of my employment, I am familiar with the functionality of Samsung Smart TVs, the setup process for Samsung Smart TVs and the Smart Hub software, and Samsung's records concerning the setup process.

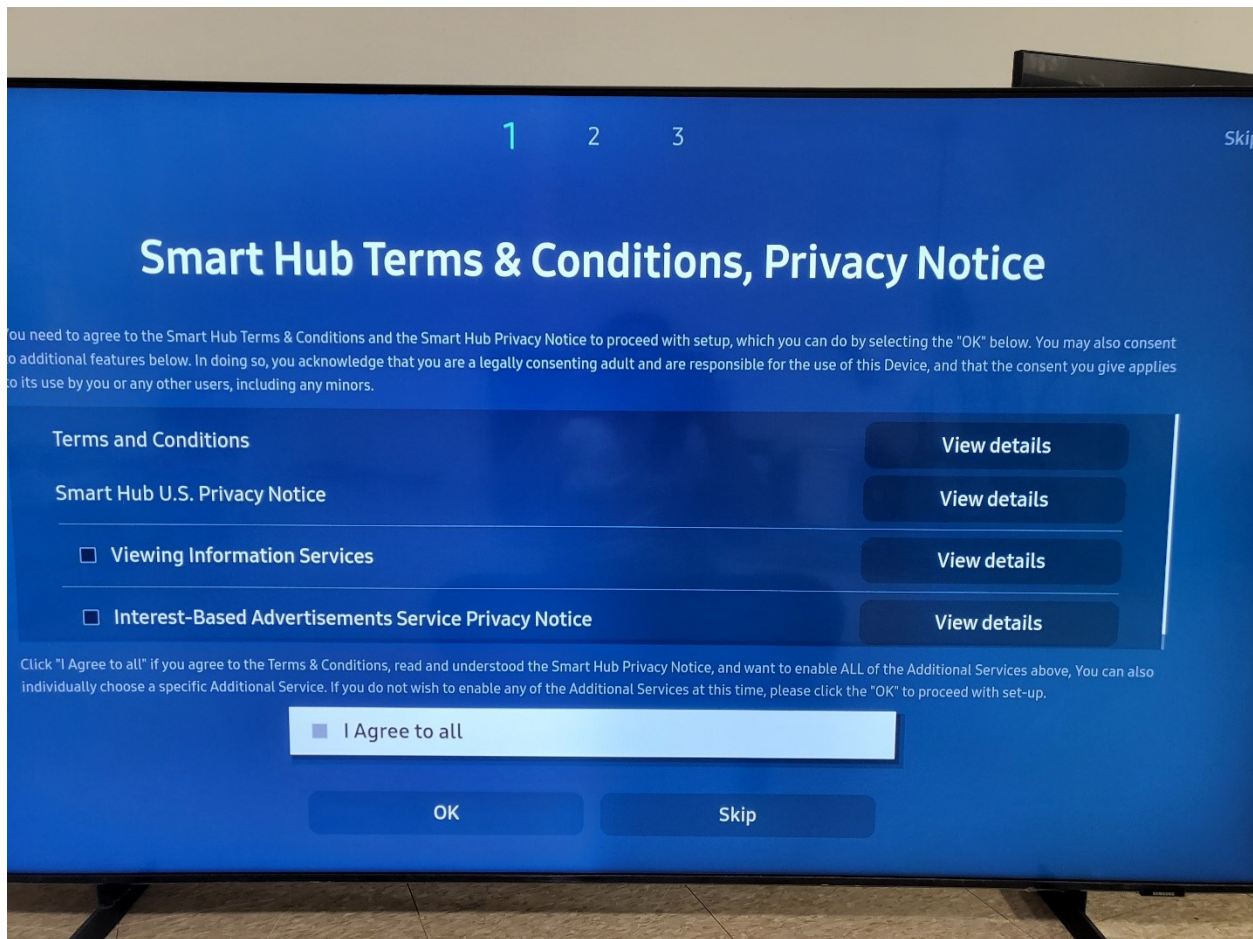
**I. PLAINTIFFS' ACCEPTANCE OF THE TERMS AND CONDITIONS AND ARBITRATION AGREEMENT**

4. I have reviewed the allegations in Plaintiffs Sonya Haythe, Douglas Smith, and Peter Coffin's (collectively, "Plaintiffs") complaint. Based on the complaint, I understand that Plaintiff Sonya Haythe alleges that she purchased a Samsung Smart TV, Model No. TU7000, in or about December 2021; Plaintiff Douglas Smith alleges that he purchased a Samsung Smart TV, Model No. TU7000, in or about October 2020; and Plaintiff Peter Coffin alleges that he purchased a Samsung Smart TV, Model No. AU8000, in or about October 2021.

5. As described more fully below, customers who purchase the TU7000 and AU8000 Smart TVs and go through the setup process to enable internet-based applications—including all three Plaintiffs here—agree to Samsung's Terms and Conditions, which include an Arbitration Agreement.

6. Each of Plaintiffs' Samsung Smart TVs is equipped with Samsung's Smart Hub software, which allows users to access internet-based applications and other "smart" features on their Smart TVs. To activate and use Smart Hub, Plaintiffs each needed to complete a setup process, which was presented on the Smart TV through a series of interactive screens. During this setup process, Plaintiffs were each presented with a page labeled "Smart Hub Terms & Conditions, Privacy Notice" in large white bold lettering.

7. Below is a true and correct picture of the "Smart Hub Terms & Conditions, Privacy Notice" screen that was presented to Plaintiffs during the setup of their Smart TVs:



8. Plaintiffs were advised at the top of the setup screen page that:

You need to agree to the Smart Hub Terms & Conditions and the Smart Hub Privacy Notice to proceed with setup, which you can do by selecting the “OK” below. You may also consent to additional features below. In doing so, you acknowledge that you are a legally consenting adult and are responsible for the use of this Device, and that the consent you give applies to its use by you or any other users, including any minors.

9. Immediately below the notice appeared the large heading “Terms and Conditions.” Plaintiffs were able to review the full text of the Terms and Conditions by clicking the “View details” button next to the “Terms and Conditions” heading.

10. The setup screen also included a link to the “Smart Hub U.S. Privacy Notice,” as well as two optional checkboxes for additional services next to the phrases “Viewing Information Services” and “Interest-Based Advertisements Service Privacy Notice.”

11. The setup screen also advised Plaintiffs as follows:

Click “I Agree to all” if you agree to the Terms & Conditions, read and understood the Smart Hub Privacy Notice, and want to enable ALL of the Additional Services above. You can also individually choose a specific Additional Service. If you do not wish to enable any of the Additional Services at this time, please click the “OK” to proceed with set-up.

Immediately below this notice were an “I Agree to all” button, an “OK” button, and a “Skip” button.

12. Consumers thus have four options to proceed with setup of their televisions. They can click the “OK” button to accept the Terms and Conditions and Smart Hub U.S. Privacy Notice without enabling any additional services. They can manually check one or more additional services and then click the “OK” button to indicate their acceptance of the Terms and Conditions and Smart Hub U.S. Privacy Notice and the additional services they manually checked. They can click the “I Agree to All” button to add all the additional services, and then click “OK” to indicate their acceptance of the Terms and Conditions, Smart Hub U.S. Privacy Notice, and all the additional services. Or they can click “Skip” if they choose not to agree to the Terms and Conditions and not to activate the Smart Hub.

13. Consumers cannot complete the setup process and start using “smart” services and internet-based features on their Smart TVs unless they click “OK” to expressly accept the Terms and Conditions. In addition to completing the setup process when they start using their Smart TV for the first time, consumers are required to complete the setup process again and agree to the Terms and Conditions again each time they reset their Smart TV to factory defaults.

14. I understand that Plaintiffs have provided Samsung with the serial numbers and unique identification numbers for the televisions they allege they purchased. Samsung maintains records relating to the setup and consent process for its Smart TVs, including records confirming

whether the consumer setting up each Smart TV clicked “OK” to agree to Samsung’s Terms and Conditions and Smart Hub U.S. Privacy Notice, as well as whether the consumer agreed to any of the additional services described above. Samsung’s records confirm that Plaintiffs did not click the “Skip” button, and that each of them instead completed the Smart Hub setup process described above and clicked “OK” to accept the Terms and Conditions when setting up their televisions. Samsung’s records reflect that Ms. Haythe’s most recent activation of the Smart Hub and acceptance of the Terms and Conditions occurred on December 20, 2021; that Mr. Smith’s most recent activation and acceptance of the Terms and Conditions occurred on June 12, 2022; and that Mr. Coffin’s most recent activation and acceptance of the Terms and Conditions occurred on November 23, 2021.

## II. THE TERMS OF THE ARBITRATION AGREEMENT

15. As described above, if Plaintiffs clicked on the “View details” button next to the Terms and Conditions heading during the setup process, they would have seen a scrollable screen showing the Terms and Conditions to which they agreed, including the Arbitration Agreement.

16. Periodically, Samsung makes minor changes to the Terms and Conditions. Samsung’s records based on Plaintiffs’ televisions’ serial numbers and unique identification numbers reflect that, when Ms. Haythe and Mr. Coffin most recently accepted the Terms and Conditions, they would have been presented with the October 27, 2020 version if they had clicked on the “View details” button. When Mr. Smith most recently accepted the Terms and Conditions, he would have been presented with the December 7, 2021 version if he had clicked on the “View details” button. Attached as **Exhibit A** is a true and correct copy of the October 27, 2020 version, and attached as **Exhibit B** is a true and correct copy of the December 7, 2021 version.

17. Both versions of the Terms and Conditions contained an identical Arbitration Agreement that provided as follows:

By using the Services, the User unconditionally consents and agrees that: (a) any claim, dispute or controversy (whether in contract, tort, or otherwise) the User may have against any Samsung entity, the officers, directors, agents and employees of any Samsung entity (the “Samsung Entity(ies)”) arising out of, relating to, or connected in any way with the Services or the determination of the scope or applicability of this clause, will be resolved exclusively by final and binding arbitration administered by the International Chamber of Commerce (“ICC”) and conducted before a sole arbitrator in accordance with the rules of the ICC; (b) this clause is made pursuant to a transaction involving interstate commerce, and shall be governed by the Federal Arbitration Act (“FAA”), 9 U.S.C. §§ 1-16 . . . .

Ex. A § 14.8; Ex. B § 14.8.

18. The Arbitration Agreement also states that

there shall be no authority for any claims to be arbitrated on a class or representative basis; arbitration can decide only the User’s and/or the applicable Samsung Entity’s individual claims; the arbitrator may not consolidate or join the claims of other persons or parties who may be similarly situated; and the User will not file or participate in a class action against Samsung.

Ex. A § 14.8(f); Ex. § 14.8(f).

19. The Arbitration Agreement further provides that “final and binding arbitration” will be “administered by the International Chamber of Commerce (“ICC”) and conducted before a sole arbitrator in accordance with the rules of the ICC,” that “the arbitrator shall apply New York law consistent with the FAA and applicable statutes of limitations,” and that “the determination of the scope or applicability of this clause, will be resolved exclusively by final and binding arbitration administered by the International Chamber of Commerce (“ICC”) and conducted before a sole arbitrator in accordance with the rules of the ICC.” Ex. A § 14.8; Ex. B § 14.8.

20. The Terms and Conditions and Arbitration Agreement also remain accessible on Samsung’s website at <https://www.samsung.com/us/rewards/terms-and-conditions/smart-hub/>.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on July 13, 2022.

A handwritten signature in black ink, appearing to read "Khaled Abuali". The script is cursive and somewhat stylized.

Khaled Abuali